SUPREME COURT, U. S.

Supreme Court of the United States

October Term, 1970

No. 1163

STEPHEN DASH, MANCE SEWELL, ALVIN M. WEBB, EDILBERTO CHAPARO, JOSEPH F. COLE, ANDREW C. PULLEY, HUBERT L. GILLIARD, EUGENE J. RUDDER, CURTIS E. MAYS and JOSEPH MILES,

Petitioners,

—against—

THE COMMANDING GENERAL, Fort Jackson, South Carolina, and SECRETARY OF THE ARMY, Washington, D.C.,

Respondents.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITIONERS' REPLY BRIEF

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Respondents cite *Adderley v. Florida*, 385 U.S. 39, and *Cox v. Louisiana*, 379 U.S. 559, for the proposition that "the right of assembly may be restricted where sought to be exercised upon government property" (Resp. Br., p. 7). These cases are inapposite for they involve situations where persons seeking to exercise First Amendment rights had no right to be on the government property involved.

Here, however, petitioners were and are entitled, indeed required, to be at Fort Jackson and could not leave the military

property without the permission of their commanding officer. See Petition, p. 11, fn. 10.

That First Amendment activities of servicemen may not be denied at a military installation merely because it is a military installation was recently recognized in a comprehensive opinion by Judge Weinstein in Cortright v. Resor, 70 Civ. 909, ___ F. Supp. ___ (E.D.N.Y., February 9, 1971), 39 U.S. Law Week 2472. There the servicemen held on-post discussions regarding the signing of petitions to be published in newspapers opposing this nation's involvement in Southeast Asia. The court recognized that "it is highly doubtful that such conversation can be barred merely because it is carried on at a military installation, especially when such presence at the installation is required." (Slip opinion, p. 76.)

Here, petitioners sought no more than to publicly express, during off-duty hours, their views on a matter of immediate public concern to all citizens of the country. Their speech involved "public appeals . . . in petitioning our Government on a vital public matter. The plea was made in a style well accepted by American tradition." Their speech involved "the exercise of rights qua civilians respecting civilian policy. Cortright v. Resor, supra (slip opinion, pp. 74, 78). [Respondents' unsupported assertions that security and discipline necessitated the restrictions imposed here cannot obscure the fact that the petitioners' activities "created no imminent threat to an interest of the Army that could possibly outweigh their interest in freedom of speech." Cortright v. Resor, supra (slip opinion, p. 79).

CONCLUSION

The petition for certiorari should be granted and the judgment reversed.

Respectfully submitted.

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